

Appendix B-1

Chesapeake Bay Preservation Area Ordinance

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Appendix B-1

Chesapeake Bay Preservation Area Ordinance

ARTICLE 1 TITLE, PURPOSE, AND AUTHORITY

Section 1000. Title.

This ordinance shall be known and referenced as the "Chesapeake Bay Preservation Area Ordinance" of Isle of Wight County, Virginia. This Ordinance is also commonly referred to as the "CBPA" Ordinance.

Section 1001. Findings of Fact.

The Chesapeake Bay and its tributaries are one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of Isle of Wight County and the Commonwealth of Virginia. The health of the Bay is vital to maintaining Isle of Wight County's economy and the welfare of its citizens.

The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including nonpoint source pollution from land uses and development. Existing high quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are adjacent to the shoreline have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. Protected from disturbance, they offer significant ecological benefits by providing water quality maintenance and pollution control as well as flood and shoreline erosion control. These lands together, designated by the Board of Supervisors as Chesapeake Bay Preservation Areas (hereinafter "CBPAs"), need to be protected from destruction and damage in order to protect the quality of water in the Bay and consequently the quality of life in Isle of Wight County and the Commonwealth of Virginia.

Section 1002. Purpose and Intent.

This ordinance is enacted to implement the requirements of Section 10.1-2100 *et seq.*, of the Code of Virginia, the Chesapeake Bay Preservation Act, and amends Appendix B-1 of the Isle of Wight County Code, known also as the Chesapeake Bay Preservation Area Ordinance. The purpose and intent of this Ordinance is to:

- a. protect existing high quality state waters;
- b. restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of aquatic life, which might reasonably be expected to inhabit them;
- c. safeguard the clear waters of the Commonwealth from pollution;
- d. prevent any increase in pollution;
- e. promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of Isle of Wight County.

Section 1003. Relationship to Referenced Laws, Other County Ordinances and Guidance Documents

- A. The requirements of this ordinance supplement the county's land development ordinances, including existing zoning and subdivision ordinances and regulations. It imposes specific regulations for development and other land uses within the Isle of Wight County preservation area. In the event of inconsistency between the provisions of this ordinance and the provisions established in other applicable ordinances, the more restrictive or stringent provisions shall apply.
- B. Permitted uses, special permit uses, accessory uses and special requirements shall be as established by the zoning ordinance and the underlying zoning district, unless specifically modified by the requirements of this ordinance.
- C. Lot size shall also comply with requirements of the underlying zoning district in the zoning ordinance, provided that all lots shall have sufficient area outside the Resource Protection Area to accommodate an intended development, in accordance with the performance standards in Section 4002, when such development is not otherwise allowed in the Resource Protection Area.
- D. References in this ordinance to any law statute, ordinance, rule or regulation in force on the date of adoption of this ordinance shall include any subsequent amendments or revisions.
- E. Guidance documents prepared by the Chesapeake Bay Local Assistance Board shall be used as references in the administration and interpretation of this ordinance. Where there appears to be a conflict between this ordinance and the guidance documents, the ordinance shall take precedence.

Section 1004. Applicability

- A. No person shall develop, alter, or use any land for residential, commercial, industrial, or civic uses, nor conduct agricultural, fishery or forestry activities in the Isle of Wight County preservation area except in compliance with the provisions of this ordinance.
- B. No development or resource utilization activity shall be permitted until all applicable approving authorities shall determine that the proposed development or activity is consistent with the goals and objectives of the Isle of Wight County preservation area program.

Section 1005. Severability

If any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, such a ruling shall not affect the validity of the remainder of this ordinance.

ARTICLE 2 DEFINITIONS

Section 2000. Purpose

It is the purpose of this Article to define words, terms and phrases contained within this ordinance and other applicable terms.

Section 2001. Word Usage

In the interpretation of this ordinance, the provisions and rules of this section shall be observed and applied, except when the context clearly requires otherwise:

- a. Words used or defined in one tense or form shall include other tenses and derivative forms.
- b. Words in the singular number shall include the plural number and words in the plural number shall include the singular number.
- c. The specific shall control the general.
- d. The word "person" includes a "firm, association, organization, partnership, trust, company," as well as an "individual."
- e. Any words pertaining to gender shall be interchangeable. The word "he" shall also mean "she", and "she" shall also mean "he".
- f. The words "used" or "occupied" include the words "intended, designed, or arranged to be used or occupied."
- g. The word "lot" includes the words "plot" or "parcel."
- h. The word "shall" is mandatory; the words "may" and "should" are permissive.
- i. In case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, or table, the text shall control.
- j. All public officials, bodies, and agencies referred to in this ordinance are those of Isle of Wight County, Virginia, unless otherwise specifically indicated.

Section 2002. Definitions.

The following words and terms used in these regulations shall have the following meanings, unless the context clearly indicates otherwise.

- a. "Agricultural lands" mean those lands used for the tilling of the soil; the growing of crops or plant growth of any kind in the open, including forestry; pasturage; horticulture; dairying; floriculture; or raising of poultry and/or livestock.
- b. "Best Management Practices" (BMP's) means a practice, or combination of practices, that are defined by a state agency or the Hampton Roads Planning District Commission

guidelines to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

- c. "Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.
- d. "Chesapeake Bay Preservation Area (CBPA)" means any land designated by the Board of Supervisors pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 10-20-et seq., and Section 10.1-2107 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.
- e. "Construction footprint" means the area of all impervious surfaces, including but not limited to buildings, roads and drives, parking areas, sidewalks and the area necessary for construction of such improvements.
- f. "Development" means the construction, or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures. This shall include any construction, modification, extension or expansion of buildings or structures; placement of fill or dumping; storage of materials; land excavation; land clearing; land improvement; or any combination of these activities, including the subdivision of land.
- g. "Diameter at breast height (DBH)" means the diameter of a tree measured outside the bark at a point 4.5 feet above the ground.
- h. "Dripline" means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.
- i. "Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to: roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.
- j. "Land Disturbing Permit" means a permit issued by the County for clearing, filling, excavating, grading or transporting, or any combination thereof.
- k. "Limits of clearing" means the extent to which vegetation can be removed from a property as shown on a plan approved by the County.
- l. "Lot coverage" means the impervious area of any lot or parcel including, but not limited to buildings, drives, parking areas, sidewalks, patios, decks, etc.
- m. "Mitigation" means measures taken to eliminate or minimize damage to environmentally sensitive areas from land disturbing or development activities. Such measures may include, but are not limited to, avoiding the impact altogether, limiting the degree or magnitude of the action, repairing or restoring the affected environmental area, reducing the impact over time by preservation and maintenance, or replacing or providing a

substitute environmental area.

- n. “Nonpoint source pollution” means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agricultural and urban land development and use.
- o. "Nontidal wetlands" mean those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the federal Clean Water Act, in 33 C.F.R. 328.3b.
- p. "Noxious Weeds" means weeds such as johnson grass, kudzu, and multiflora rose, including those identified by the Virginia Department of Conservation and Recreation as Invasive Alien Plant Species.
- q. "Plan of Development" means the process for plot plan, site plan, or subdivision plat review to ensure compliance with Section 10.1-2109 of the Code of Virginia and this Ordinance, prior to any clearing or grading of a site and the issuance of a zoning or building permit.
- r. "Point source pollution" means pollution of state waters resulting from any discernible, defined or discrete conveyances.
- s. “Public Road” means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to i) the Erosion and Sediment Control Law and ii) the Virginia Stormwater Management Act. This definition includes roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by local government in accordance with the standards of that local government.
- t. "Redevelopment" means the process of developing land that is or has been previously developed.
- u. "Resource Management Area (RMA)" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.
- v. "Resource Protection Area (RPA)" means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.
- w. “Silvicultural activities” means forest management activities, including but not limited to

the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

- x. “Substantial alteration” means expansion or modification of a building or development that would result in a disturbance of land exceeding 2,500 square feet in the Resource Management Area only.
- y. “Substantial work” means that improvements have proceeded to where vertical construction of the basic structure or walls has begun on a building or other structure or for other land improvements, that significant progress has been made towards accomplishing the approved project.
- z. "Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.
- aa. "Tidal wetlands" means vegetated and nonvegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.
- ab. "Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) piers, marinas, and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; (v) fisheries or other marine resources facilities; and (vi) shoreline and bank stabilization projects, where deemed necessary.
- ac. “Water Body with perennial flow” means a body of water that flows in a natural or manmade channel year-round during a year of normal precipitation. This includes, but is not limited to, streams, estuaries, and tidal embayments and may include drainage ditches or channels constructed in wetlands or from former natural drainageways, which convey perennial flow. Lakes and ponds, into which a perennial stream flows and perennial flow exits, are part of a perennial stream. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. Perennial flow can be inferred by the presence of biological indicators, benthic macroinvertebrates that require water for entire life cycles, or by using an approved stream determination protocol.
- ad. "Wetlands" means tidal and nontidal wetlands.
- ae. “Zoning Administrator” means the person designated as the official responsible for enforcing and administering all requirements of the County Zoning Ordinance, or a duly authorized designee.

ARTICLE 3 AREAS OF APPLICABILITY, DELINEATIONS OF BOUNDARIES, &

EXEMPTIONS

Section 3000. Areas of Applicability.

- A. The Chesapeake Bay Preservation Area (CBPA) Ordinance shall apply to all lands within the Chesapeake Bay drainage basin. The limits of this area are generally shown on the Chesapeake Bay Preservation Area maps adopted by the Board of Supervisors, which together with all explanatory matter thereon, are adopted as a part of this Ordinance. This information may be supplemented by digital mapping resources in the course of administering the provisions of this ordinance.

- B. The Chesapeake Bay Preservation Area shall be divided into two areas consisting of the following:
 - 1. The Resource Protection Area (RPA), which shall include:
 - a. Tidal wetlands;
 - b. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
 - c. Tidal shores;
 - d. Water bodies with perennial flow, including streams, rivers, lakes and ponds;
 - e. Other lands as may be designated by the Board of Supervisors and shown on the CBPA maps; and,
 - f. A vegetated buffer area not less than 100 feet in width located adjacent to, landward of, and on both sides of the resources listed in subsections a. through e. above.

 - 2. The Resource Management Area (RMA) shall consist of all areas within the Chesapeake Bay watershed.

Section 3001. Delineation and Interpretation of Boundaries.

A. The site-specific boundaries of the Resource Protection Area shall be provided by the applicant. The applicant shall delineate specific boundaries of the RPA through the performance of an environmental site assessment to be approved by the Zoning Administrator in accordance with Section 5000.B of this ordinance.

- 1. Delineation of the RPA shall include the designation of perennial water bodies by use of a scientifically valid system of in-field indicators of perennial flow or other means approved by the Zoning Administrator. The site-specific delineation of the RPA shall be undertaken by the applicant and approved by the Zoning Administrator.

- 2. All components included in the Resource Protection Area (Section 3000, B. 1. above)

shall be delineated separately, and shall be prepared by a person trained, qualified and experienced in performing wetland delineation work, such as an environmental engineer, environmental scientist, soil scientist, biologist or geologist.

3. Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987, and shall be verified by the U. S. Army Corps of Engineers, where it determines it has jurisdiction.
 4. The Chesapeake Bay Preservation Area Maps may be used as a guide to the general location of Resource Protection Areas, but shall not be a substitute for an on-site delineation.
 5. This requirement may be waived by the Zoning Administrator when the proposed use or development and all associated land disturbing activities will clearly be located outside of a Resource Protection Area, based on an evaluation by the Zoning Administrator and after referral to the Board of Supervisors.
 6. Delineations shall be valid for a period of five years.
- B. Where the applicant has provided a determination of the Resource Protection Area, the Zoning Administrator shall inspect the site and verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Zoning Administrator may consider previously submitted delineations and materials and consult with qualified specialists, including any private, state or federal resources available to the County. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of Section 5000.H (Denial/Appeal of Plan).
- C. If the boundaries of the Resource Management Area includes only a portion of a lot, parcel, or development project, the entire lot, parcel, or development project shall comply with the requirements of this Ordinance. The division of property shall not constitute an exemption from this requirement.

Section 3002. Exemptions.

The following uses and activities are exempt from the provisions of this ordinance provided that all of the requirements listed below are met.

- A. Exemptions for Public Utilities, Railroads, Public Roads, and Facilities: Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and the Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this Ordinance. The exemption of public roads is further conditioned on the following:
1. The road alignment and design has been optimized, consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the Resource Protection Area and to minimize the adverse effects on water quality.

B. Exemptions for Local Utilities and other service lines: Construction, installation, and maintenance of water, sewer, natural gas, underground telecommunications and cable television lines owned, permitted or both, by a local government or regional service authority shall be exempt from this Ordinance provided that:

1. To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;
2. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
3. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and
4. Any land disturbance exceeding an area of 2,500 square feet complies with Isle of Wight County erosion and sediment control requirements.

C. Exemptions for Silvicultural Activities: Silvicultural activities are exempt from the requirements of this Ordinance provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January 1997 edition of "Best Management Practices for Forestry Operations." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry practices in Chesapeake Bay Preservation Areas.

D. Exemptions in Resource Protection Areas: The following land disturbances in Resource Protection Areas may be exempt from this Ordinance provided that they comply with the requirements listed in subsections 1 through 4 below and obtain a zoning permit from the Zoning Administrator: (i) water wells; (ii) passive recreation facilities such as boardwalks, walking trails, and pathways; and (iii) historic preservation and archaeological activities.

1. Any required permits, except those to which this exemption specifically applies, shall have been issued; and
2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality; and
3. The intended use does not conflict with nearby planned or approved uses.
4. Any land disturbance exceeding an area of 2,500 square feet shall comply with Isle of Wight County erosion and sediment control requirements.
5. Boardwalks, walking trails and pathways shall not exceed five (5) feet in width and shall be paved with a permeable material. For purposes of this section, boardwalks shall consist of an elevated public pedestrian walkway constructed along a shoreline or beach.

ARTICLE 4 PERFORMANCE STANDARDS AND DEVELOPMENT CRITERIA

Section 4000. General Performance Standards.

A. Purpose and Intent.

The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Keeping impervious cover to a minimum enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements is also to implement the following objectives:

1. prevent a net increase in nonpoint source pollution from new development;
2. achieve a 10% reduction in nonpoint source pollution from redevelopment; and,
3. achieve a 40% reduction in nonpoint source pollution from agricultural uses.

B. General Performance Standards for Development and Redevelopment in the Chesapeake Bay Preservation Area.

1. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
 - a. In accordance with an approved plan of development, the limits of clearing or grading shall be strictly defined by the construction footprint. The Zoning Administrator shall review and approve the construction footprint through the plan of development process. These limits shall be clearly shown on submitted plans and physically marked in the development site.
 - b. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Zoning Administrator.
2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the proposed use or development permitted and in accordance with the Virginia Erosion and Sediment Control Handbook.
 - a. Existing trees over 8 inches diameter at breast height (DBH) shall be preserved outside the approved construction footprint in accordance with the same standards established in Section 4002 B. 1.
 - b. Site clearing for construction activities shall be allowed as approved by the Zoning Administrator through the plan of development review process outlined under Section 5000 of this Ordinance.
 - c. Prior to clearing and grading, suitable protective barriers, like safety fencing, shall be erected 5 feet outside the dripline of any tree or stand of trees to be preserved. Protective barriers shall remain throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by

the barrier.

3. Development on slopes greater than fifteen percent (15%) shall be prohibited unless such development is demonstrated to be the only effective way to maintain or improve slope stability.
4. Land development shall minimize impervious cover consistent with the proposed use or development. Impervious coverage on any lot or parcel shall be limited to the lot coverage permitted under the zoning district requirements of said lot or parcel, but in no case shall exceed 60% of the total site.
5. Notwithstanding any other provisions of this Ordinance or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of single-family houses, shall comply with the requirements of the Erosion and Sediment Control Law, Chapter 6 of the County Code.
6. All development and redevelopment within RMAs and RPAs that exceeds 2,500 square feet of land disturbance shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of Section 5000 of this ordinance; or a subdivision plan in accordance with the Subdivision Ordinance; or a Water Quality Impact Assessment in accordance with Section 4003 of this Ordinance.
7. All on-site sewage disposal systems not requiring a Virginia Pollution Discharge Elimination System (VPDES) permit shall be pumped out at least once every five years, unless the owner submits documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning, and the tank does not need the effluent pumped out.
8. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided, in accordance with the Isle of Wight County Health Code. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989 when a reserve sewage disposal site is not available, as determined by the local Health Department. Building or the construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board, until the structure is served by public sewer.
9. For any use or development, stormwater runoff shall be controlled by the use of best management practices consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4 VAC 3-20-10 et seq.)
 - a. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load, and at a minimum shall be equal to or less than 0.45 lbs. of phosphorus per acre per year. For purposes of administration, an impervious surface of sixteen percent (16%) of the total lot area shall be considered the equivalent, based on the calculated average land cover condition of Tidewater, Virginia;
 - b. For redevelopment sites, the nonpoint source pollution load shall be reduced by at least 10 percent. The Zoning Administrator may waive or modify this

requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:

- i. The post-development nonpoint source pollution runoff load shall not exceed the pre-development load;
 - ii. Runoff pollution loads shall be calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution;
 - iii. If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service.
- c. All Best Management Practices (BMP's) shall be properly and regularly maintained to insure that they continue to function as originally designed. A storm water maintenance agreement shall be required of the owner for all structural BMP's in a manner and form acceptable to the County Attorney and Zoning Administrator, and shall be recorded in the Circuit Court Clerk's Office.
10. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator, in accordance with Section 5000, of this Ordinance.
11. Land upon which agricultural activities are being conducted shall undergo a soil and water quality conservation assessment. Such assessments shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with this Ordinance.

Section 4001. Development Criteria for Resource Protection Areas.

- A. Land development in Resource Protection Areas may be allowed in accordance with other County Ordinances only when permitted by the Zoning Administrator and if it:
- i. is water-dependent; or
 - ii. constitutes redevelopment;
 - iii. is a new use subject to the provisions of Section 4002 B. 2. of this Ordinance;
 - iv. is a road or driveway crossing satisfying the conditions set forth in Section 4001.A.3 below; or,
 - v. is a flood control or stormwater management facility that drains or treats water from multiple development projects or from a significant portion of a watershed provided i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; ii) the size of the

facility is the minimum necessary to provide for flood control, stormwater management, or both; iii) the facility must be consistent with a stormwater management program that has been approved by the Board as a Phase 1 modification to the local government's program; iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state or federal agencies; v) approval must be received from the local government prior to construction; and vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subsection to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

1. A new or expanded water dependent facility may be allowed provided that the following criteria are met:
 - a. It does not conflict with the comprehensive plan;
 - b. It complies with the performance criteria set forth in Section 4001 and 4002 of this Ordinance;
 - c. Any nonwater- dependent component is located outside of the RPA; and
 - d. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided

2. Redevelopment on isolated redevelopment sites shall be permitted only if there is not an increase in the amount of impervious cover and no further encroachment occurs within the RPA and it shall conform to applicable erosion and sediment control requirements outlined under 4000.B.5 and the stormwater management requirements outlined under Section 4000.B(9) of this Ordinance. For purposes of this section, in redeveloping a site, the encroachment of a proposed building or structure shall be based only on the location of existing buildings or structures, or the locations of legally established historical buildings or structures, and shall not be based on other impervious cover (i.e. driveways, sidewalks, patios, decks, etc.) located on the site. (Amended 12/18/04)

3. Roads and driveways not exempt under Section 3002 and which, therefore, must comply with the provisions of this Ordinance, may be constructed in or across RPAs if each of the following conditions are met:
 - a. The Zoning Administrator makes a finding that there are no reasonable alternatives to aligning the road or drive in or across the RPA;
 - b. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and minimize adverse effects on water quality;
 - c. The design and construction of the road or driveway satisfy all applicable criteria of this Ordinance;
 - d. The Zoning Administrator reviews the plan for the road or driveway proposed in or

across the RPA in coordination with the plan of development requirements as required under Section 5000 or subdivision plan.

- B. A water quality impact assessment as outlined in Section 4003 of this Ordinance shall be required for any proposed land disturbance, development or redevelopment within Resource Protection Areas.

Section 4002. Performance Standards in Resource Protection Areas.

- A. Purpose and Intent

To minimize the adverse effects of human activities on the other components of Resource Protection Areas (RPA), state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.

The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The 100-foot full buffer area shall be designated as the landward component of the Resource Protection Area, in accordance with Section 3000 and Section 5000 of this Ordinance. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in Section 4001 and this section, the 100-foot buffer area is not reduced in width.

The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.

- B. General Performance Standards for Development and Redevelopment.

- 1. Permitted modifications to the buffer area.

Note: Please refer to the Riparian Buffer Guidance Manual prepared by the Virginia Chesapeake Bay Local Assistance Board for additional information and guidance on the modifications to the buffer area permitted below.

- a. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only, subject to approval by the Zoning Administrator who may require a Plan of Development in accordance with Section 5000, to provide for reasonable sight lines, access paths, and general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:
 - i. Trees may be pruned or removed as necessary to provide for reasonable sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
 - ii. Any path shall be constructed and surfaced so as to effectively control erosion.

- iii. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be removed and thinning of trees allowed as permitted by the Zoning Administrator pursuant to sound horticultural practices.
 - iv. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.
- 2. Permitted encroachments into the buffer area.
 - a. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Board of Supervisors may consider an exception in accordance with Section 5002 of this Ordinance that permits an encroachment into the buffer area in accordance with Section 5000 and the following criteria:
 - i. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - ii. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
 - iii. The encroachment may not extend into the seaward 50 feet of the buffer area.
 - b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, the Board of Supervisors may consider an exception in accordance with Section 5002 of this Ordinance that permits an encroachment into the buffer area in accordance with Section 5000 and the following criteria:
 - i. The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;
 - ii. Conditions or mitigation measures imposed through a previously approved exception shall be met;
 - iii. If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated at the expense of the owner to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and
 - iv. The criteria in subsection 2 a. above for lots recorded prior to October 1, 1989 shall be met.

3. Establishment of the Required Buffer
 - a. Where a buffer has been reduced or does not exist, a landscaping plan pursuant to Section 5000 C. shall be submitted and approved prior to issuance of any zoning or building permit. The landscaping plan shall be implemented in full or surety provided to the County pursuant to Section 5000 F. 2. prior to issuance of a certificate of occupancy.
 - b. In determining and approving an appropriate buffer, the Zoning Administrator shall take into consideration adequate space around existing structures and other factors unique to the site.
 - c. In determining the need for establishing the required buffer, staff may rely on the latest aerial photographs, actual site visits, and other appropriate resources available.
 - d. This subsection shall not apply to the conversion from agricultural or silvicultural uses, which shall be governed by Section 4002 B. 5.
4. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:
 - a. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the Peanut Soil and Water Conservation District, addresses the more predominant water quality issue on the adjacent land – erosion control or nutrient management – is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq. administered by the Virginia Department of Conservation and Recreation.
 - b. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T”, as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq. administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining

buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

- c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices as considered by the Peanut Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land – either erosion control or nutrient management.
 - d. If specific problems are identified pertaining to agricultural activities which are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the zoning administrator, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal conditions so that the probability for successfully implementing the corrective measures is greatest.
 - e. In cases where the landowner or his agent or operator has refused assistance from the soils and water conservation district in complying with or documenting compliance with the agricultural requirements of this ordinance, the district shall report the noncompliance to the zoning administrator. The zoning administrator shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from the initial notification of the deficiencies to the landowner. The zoning administrator, in cooperation with the district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal conditions so that the probability for successfully implementing the corrective measures is greatest.
3. When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full 100-foot wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.
 4. Prior to any land disturbing activities or any development of a lot or parcel, a permanent sign shall be installed by the owner or developer identifying the landward limits of the RPA. Such signs shall conform to general guidelines established by the Zoning Administrator and approved by the Board of Supervisors as to size, design, color, material, location and content and shall be installed and maintained at the expense of the owner or developer in accordance with those guidelines. Signs may be obtained from the County, at cost, or may be provided by the developer.

Section 4003. Water Quality Impact Assessment

A. Purpose and Intent

The purpose of the water quality impact assessment is to: (i) identify the impacts of proposed land disturbance, development or redevelopment on water quality and lands in RPAs and other environmentally sensitive lands; (ii) ensure that, where land disturbance, development or redevelopment does take place within RPAs and other sensitive lands, it will be occur on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands; (iii) to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; (iv) provide for administrative relief from terms of this Ordinance when warranted and in accordance with the requirements contained herein; and (v) specify mitigation which will address water quality protection.

B. Applicability

A water quality impact assessment shall be required for any development or rezoning in the Chesapeake Bay Preservation Area which:

- i. will disturb any portion of the 100 foot buffer area-of an RPA, or any component identified in Section 3000 B (1);
- ii. contains ten (10) acres or more for any use, other than a development of single family detached residential lots;
- iii. contains twenty-five (25) acres or more for the development of single family detached residential lots; or,
- iv. any other development that may warrant such assessment due to unique characteristics of the site or intensity of the proposed use or development, as may be required by the zoning administrator.

C. Contents of the Impact Assessment

The information required below shall be considered a minimum, unless the Zoning Administrator determines that some of the elements are unnecessary due the scope and nature of the proposed use and development of land.

1. A site plan, which shall, at a minimum, contain the following:
 - a. Location of the components of the Resource Protection Area, including the 100 foot buffer area delineated in accordance with Section 3001; (Amended 12/18/04)
 - b. Location and nature of the proposed encroachment into the buffer area, including, type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
 - c. Type and location of proposed best management practices to mitigate the proposed encroachment;
 - d. Location of existing vegetation onsite, including the number and type of trees

and other vegetation to be removed in the buffer to accommodate the encroachment or modification;

- e. Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

2. A hydrogeological element that:

- a. Describes the existing topography, soils, and hydrology of the site and adjacent lands.
- b. Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.
- c. Indicates the following:
 - i. Disturbance or removal of wetlands and justification for such action;
 - ii. Disruptions or reductions in the supply of water to wetland, streams, lakes, rivers or other water bodies;
 - iii. Disruptions to existing hydrology including wetland and stream circulation patterns;
 - iv. Source location of and description of proposed fill material;
 - v. Location of dredging and location of dumping area for such dredged material;
 - vi. Estimation of pre- and post development pollutant loads in runoff;
 - vii. Estimation of percent increase in impervious surface on site, type(s) of surfacing material used;
 - viii. Percent of site to be cleared for project;
 - ix. Anticipated duration and phasing schedule of construction project;
 - x. Listing of all requisite permits from all applicable agencies necessary to develop project.
- d. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigative measures include:
 - i. Additional proposed erosion and sediment control concepts beyond those normally required under § 4000.B(5) of this Ordinance; these additional concepts may include the following: minimizing the extent of cleared area; perimeter controls; reduction of runoff velocities; measures to stabilize disturbed areas; schedule and personnel for site inspection;

- ii. Proposed stormwater management system for nonpoint source quality and quantity control;
- 3. A vegetative element that:
 - a. Identifies and delineates the location of all woody plant material on site, including all trees on site 8 inches or greater diameter at breast height or, where there are groups of trees, said stands may be outlined.
 - b. Describes the impacts the development or use will have on the existing vegetation. Information should include:
 - i. General limits of clearing, based on all anticipated improvements, including buildings, drives, and utilities;
 - ii. Clear delineation of all trees and other woody vegetation which will be removed;
 - iii. Description of all plant species to be disturbed or removed.
 - c. Describes the proposed measures for mitigation. Possible mitigation measures include:
 - i. Proposed design plan and replanting schedule for trees and other woody vegetation removed for construction, including a list of proposed plants and trees to be used;
 - ii. Demonstration that the re-vegetation plan supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control;
 - iii. Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overload flow benefits from such vegetation;
 - iv. Demonstration that indigenous plants are to be used to greatest extent possible.
- 4. In the case of a WQIA for shoreline and bank stabilization projects and piers, the following items shall be required:
 - a. An environmental assessment in accordance with Section 5000.B;
 - b. A landscaping plan in accordance with Section 5000.C;
 - c. A stormwater management plan in accordance with Section 5000.D, if deemed necessary by the Zoning Administrator;
 - d. An erosion and sediment control plan in accordance with Section 5000.E; and
 - e. Project construction plans shall be certified as complete and accurate by a professional shoreline engineer or other qualified professional as well as a determination as to the necessity of the project.

5. For phased projects, an updated WQIA shall be provided for each phase to the County Planning and Zoning Department demonstrating the project's compliance with the criteria of the original WQIA. An updated WQIA shall be required until all phases of the project are complete.

D. Submission, Review Requirements, and Evaluation Procedure

1. Twenty five (25) copies of all site drawings and other applicable information as required by Subsection C above shall be submitted to the Zoning Administrator for review.
2. All information required in this section shall be certified as complete and accurate by a professional engineer or certified land surveyor qualified to prepare such information.
3. Upon receipt of a water quality impact assessment, the Zoning Administrator will determine if review by CBLAD or any other state agency is warranted. The Zoning Administrator will incorporate any comments received from such a review into the final report, provided that such comments are received within 90 days of the request.
4. Upon receipt of a completed water quality impact assessment and receipt of all appropriate comments, the Zoning Administrator shall forward the information to the Planning Commission for consideration. For shoreline and **bank stabilization projects and piers** consistent with the provisions of this ordinance, the Zoning Administrator may grant administrative approval of the water quality impact assessment.
5. The Planning Commission will determine whether or not the proposed development is consistent with the spirit and intent of this Ordinance and make a recommendation to the Board of Supervisors based upon the following criteria:
 - a. Within any RPA, the proposed development is water-dependent or redevelopment;
 - b. The percentage of existing wetlands disturbed by the development. The number of square feet or acres to be disturbed.
 - c. The development will not result in significant disruption of the hydrology of the site;
 - d. The development will not result in unnecessary destruction of plant materials on site;
 - e. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
 - f. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve "no net increase" in pollutant loadings;
 - g. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits, as well as runoff control and pollutant removal equivalent of the full 100-foot undisturbed buffer area;

- h. The design and location of any proposed drainfield will be in accordance with the requirements of Section 4000;
- 6. The Planning Commission shall recommend additional mitigation where potential impacts have not been adequately addressed, subject to final approval or modification by the Board of Supervisors. Evaluation of mitigation measures will be made by the Planning Commission based on the criteria listed above and in subsections 5.
- 7. The Planning Commission shall find the proposal to be inconsistent with the purpose and intent of this Ordinance when the impacts created by the proposal cannot be mitigated, subject to final approval or modification by the Board of Supervisors. Evaluation of the impacts will be made by the Planning Commission based on the criteria listed in subsections 5.

ARTICLE 5 ADMINISTRATIVE PROCEDURES AND ENFORCEMENT

Section 5000. Plan of Development Process

Any development, or any redevelopment exceeding 2500 square feet of land disturbance shall be accomplished through a plan of development process prior to any development preparation activities onsite, such as clearing or grading of the site and the issuance of any building permit, to assure compliance of all applicable requirements of this Ordinance. Modifications to the required buffer may require a plan of development, as determined by the Zoning Administrator.

A. Required Information.

In addition to the requirements of County Zoning Ordinance or the requirements of the County Subdivision Ordinance, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.

The following plans or studies shall be submitted, unless otherwise provided for:

1. A plot plan or site plan in accordance with the provisions of County Zoning Ordinance or subdivision plat in accordance with the provisions of the County Subdivision Ordinance;
2. An environmental site assessment.
3. A landscaping plan;
4. A stormwater management plan;
5. An erosion and sediment control plan in accordance with the provisions of Chapter 6 of the County Code.

B. Environmental Site Assessment.

An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.

1. The environmental site assessment shall be drawn to scale and clearly delineate the environmental components identified in Section 3000. B of this ordinance
2. Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987
3. The environmental site assessment shall delineate the geographic extent of the Resource Protection Area on the specific site or parcel as required under Section 3001 of this Ordinance;
4. The environmental site assessment shall be drawn at the same scale as the preliminary

site plan or subdivision plat, and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. This requirement may be waived by the Zoning Administrator when the proposed use or development will be clearly located outside of an RPA, based upon an evaluation of the Zoning Administrator.

C. Landscape Plan.

A landscape plan shall be submitted in conjunction with site plan review and approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel will be permitted without an approved landscape plan.

Landscape plans shall be prepared and/or certified by a design professional practicing within their areas of competence as prescribed by the Code of Virginia.

1. Contents of the Plan.

- a. The landscape plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site 8 inches or greater diameter at breast height (DBH) shall be shown on the landscaping plan, or where there are groups of trees, said stands may be outlined instead. The specific number of trees 8 inches or greater DBH to be preserved outside of the building envelope shall be indicated on the plan. Trees and other woody vegetation proposed to be removed to create the desired construction footprint shall be clearly delineated on the landscaping plan.
- b. Any required RPA buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Ordinance, shall be shown on the landscaping plan.
- c. Within the buffer area, trees and other woody vegetation to be removed for reasonable sight lines, vistas, access paths, and best management practices, as provided for in Section 4002. B.(1)(a), shall be shown on the plan. Vegetation required by this ordinance to replace any existing trees within the buffer area shall be also be depicted on the landscape plan.
- d. Trees and other woody vegetation to be removed for shoreline stabilization projects and any replacement vegetation required by this Ordinance shall be shown on the landscape plan.
- e. The plan shall depict grade changes or other work adjacent to trees that would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
- f. The landscape plan will include specifications for the protection of existing trees and other vegetation during clearing, grading, and all phases of construction.
- g. If the proposed development is a change in use from agricultural or silvicultural to some other use, the plan must demonstrate the re-establishment of vegetation in the buffer area.

2. Plant Specifications.

- a. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.
- b. All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
- c. Where areas to be preserved, as designated on an approved landscaping plan, are encroached, replacement of existing trees and other vegetation shall be achieved with a ratio of 3 planted trees to each tree removed in accordance with good woodlot management. Replacement trees shall be a two (2) inches DBH at the time of planting.
- d. Use of native or indigenous species is strongly encouraged.

3 Maintenance.

- a. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provisions of this Ordinance.
- b. In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season, as required by the provisions of this Ordinance.

D. Stormwater Management Plan.

A stormwater management plan shall be submitted as part of the plan of development process required by this Ordinance and in conjunction with site plan or subdivision plan approval.

1. Contents of the Plan.

The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this Ordinance. At a minimum, the stormwater management plan must contain the following:

- a. Location and design of all planned stormwater control devices;
- b. Procedures for implementing non-structural stormwater control practices and techniques;
- c. Pre- and post-development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations;
- d. For facilities, verification of structural soundness, including a Professional

Engineer or Class IIIB Surveyor Certification;

2. Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.
3. All engineering calculations must be performed in accordance with the procedures outlined in the current edition of the Virginia Stormwater Management Handbook.
4. Performance assurances shall be provided that all BMP's required in a plan of development shall be constructed to comply with the performance criteria set forth herein. The form of the agreement and the type of bond, letter of credit or other security shall be to the satisfaction of and approved by the County Attorney. The amount of bond, letter of credit or other security and designated length of completion time shall be set by the zoning administrator.
5. The plan shall establish a schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the County then a maintenance agreement shall be executed between the responsible party and the County.
6. For phased projects, an updated stormwater management plan shall be provided for each phase to the County Planning and Zoning Department demonstrating the project's stormwater management facilities are still meeting the pollutant removal standards of the original WQIA. Updated stormwater management plans shall be required until all phases of the project are complete.

E. Erosion and Sediment Control Plan

An erosion and sediment control plan shall be submitted that satisfies the requirements of this Ordinance and in accordance with Chapter 6 of the County, in conjunction with plot plan, site plan or subdivision plan approval.

F. Final Plan

Final plans for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required in the County Zoning Ordinance.

1. Final plans for all lands within CBPAs shall include the following additional information:
 - a. The delineation of the Resource Protection Area boundary, including the 100-foot buffer component;
 - b. Plat or plan note stating that no land disturbance is allowed in the buffer area without review and approval by the Zoning Administrator;
 - c. All wetlands permits required by law;

- d. A maintenance agreement as deemed necessary and appropriate by the Zoning Administrator to ensure proper maintenance of best management practices in order to continue their functions.

2. Installation and Bonding Requirements.

- a. Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant material or facilities is completed in accordance with the approved site plan.
- b. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the County a form of surety satisfactory to the County Attorney in an amount equal to the remaining plant materials, related materials, or installation costs of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities as determined by the Zoning Administrator.
- c. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the County.
- d. All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to the County. The County may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.
- e. After all required actions of the approved site plan have been completed, the applicant must submit a written request for final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Zoning Administrator, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following receipt of the applicant's request for final inspection. The Zoning Administrator may require a certificate of substantial completion from a Professional Engineer or Class III B Surveyor before making a final inspection.

G. Administrative Responsibility.

Administration of the plan of development process shall be in accordance with the County Zoning Ordinance or the County Subdivision Ordinance. The Zoning Administrator shall approve, approve subject to conditions, or disapprove the plans in accordance with the reviewing authorities' recommendations. The Zoning Administrator shall return notification of plan review results to the applicant, including recommended conditions or modifications. In the event that the results and/or recommended conditions or modifications are acceptable to the applicant, the plan shall be so modified, if required, and approved.

H. Denial of Plan, Appeal of Conditions or Modifications.

In the event the final plan or any component of the plan of development process is disapproved or recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Planning Commission within 60 days of the administrative decision to be appealed. The Planning Commission shall make a recommendation to the Board of Supervisors. The final decision on an appeal shall be made by the Board of Supervisors.

In preparing to recommend to grant or deny an appeal, the Planning Commission must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance standards in this Ordinance. If the Planning Commission finds that the applicant's plan does not meet the above stated criteria, they shall recommend denial of the plan.

Section 5001. Nonconforming Uses and Nonconforming Structures.

- A. The lawful use of a building or structure which existed on October 1, 1989 or which lawfully exists at the time of any amendment to the performance standards and criteria of this ordinance and which became not in compliance, may continue subject to the provisions of the County Zoning Ordinance and the provisions below:

No change or expansion of use shall be allowed with the exception that:

1. The Zoning Administrator may grant a nonconforming use and/or waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures provided that: (Amended 12/18/04)
 - a. There will be no increase in nonpoint source pollution load;
 - b. Any development or land disturbance exceeding an area of 2500 square feet complies with all erosion and sediment control requirements of this Ordinance.
2. An application for a nonconforming use and/or waiver shall be made to and upon forms furnished by the Zoning Administrator and shall include for the purpose of proper enforcement of this Ordinance, the following information:
 - a. Name and address of applicant and property owner;
 - b. Legal description of the property and type of proposed use and development;
 - c. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area;
 - d. Location and description of any existing private water supply or sewage system.
3. A nonconforming use and development waiver shall become null and void twenty-four (24) months from the date issued if no substantial work has commenced.

4. An application for the expansion of a nonconforming structure may be approved by the Zoning Administrator through an administrative review process provided that the following findings are made:
 - a. The request for the waiver is the minimum necessary to afford relief;
 - b. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Ordinance to other property owners in similar situations;
 - c. The waiver is in harmony with the purpose and intent of this Ordinance and does not result in water quality degradation;
 - d. The waiver is not based on conditions or circumstances that are self-created or self-imposed;
 - e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
 - f. Other findings, as appropriate and required by the County are met; and
 - g. In no case shall this provision apply to accessory structures.

Section 5002. Exceptions.

- A. A request for an exception to the requirements of Sections 4000 and 4002 of this Ordinance or any other exception requested from the provisions of this Ordinance shall be made in writing to the Planning Commission, who shall make a recommendation to the Board of Supervisors. It shall identify the impacts of the proposed exception on water quality and on lands within the Resource Protection Area through the preparation of a water quality impact assessment, which complies with the provisions of Section 4003, and accompanied with a processing fee of \$750.
- B. The Planning Commission and Board of Supervisors shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with §15.2-2204 of the Code of Virginia.
- C. The Planning Commission shall review the request for an exception and the water quality impact assessment and may recommend the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Ordinance. In rendering its decision, the Planning Commission shall not recommend in favor of the applicant unless it finds:
 1. That the strict application of the ordinance would produce an undue hardship and will not confer upon the applicant any special privileges denied by this Ordinance to other property owners in the CBPA areas;
 2. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
 3. The exception request is the minimum necessary to afford relief;

4. The exception request will be in harmony with the purpose and intent of this Ordinance, not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
 5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- D. If, after applying the criteria set forth above, the Board of Supervisors refuses to grant the exception, the Zoning Administrator shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant.
- E. Any person or persons jointly or severally aggrieved by a decision of the Board of Supervisors may present to the circuit court of the County of Isle of Wight a petition specifying the grounds on which aggrieved within thirty (30) days after the final decision of the Board of Supervisors. Costs shall not be allowed against the Board of Supervisors, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed therefrom.

Section 5003. Enforcement, violation and penalties.

- A. The primary responsibility for administering and enforcing this ordinance shall be assigned to the Zoning Administrator or a duly authorized designee. The Zoning Administrator or his duly authorized designee, Planning Commission members and Board of Supervisors members including other persons designated by the Board of Supervisors, shall have authority to conduct inspections and surveys upon the property affected by this ordinance to determine compliance with this ordinance. The Zoning Administrator shall seek criminal or civil enforcement for any provision of this ordinance and take any action on behalf of the County to prevent or abate any violation or potential violation of this ordinance. The Zoning Administrator, upon written request of an interested person whose property may be affected, shall render an opinion as to the applicability of this ordinance to particular uses in its application to the factual circumstances presented. The Zoning Administrator shall design and distribute applications and forms required for this ordinance and request information that is pertinent to the request of the approval and shall perform such other duties as are necessary for the proper enforcement and administration of this ordinance.
- B. In addition to any other remedies in subsection (a) of this section, the following penalties are incorporated in this ordinance as follows:
1. Any person who: (i) violates any provision of the ordinance or (ii) violates or fails, neglects, or refuses to obey any Board of Supervisors' or the Zoning Administrator's final notice, order, rule, regulation, or variance or permit condition authorized under this ordinance shall, upon such finding by an appropriate circuit court, be assessed a penalty not to exceed five thousand dollars (\$5,000.00) for each day of violation.
 2. With the consent of any person who: (i) violates any provision of this ordinance or (ii) violates or fails, neglects, or refuses to obey any Board of Supervisors' or Zoning Administrator's, notice, order, rule, regulation, or variance or permit condition authorized under this ordinance, the Board of Supervisors' may provide for the issuance of an order against such person for the onetime payment of civil charges for each

violation in specific sums, not to exceed ten thousand dollars (\$10,000.00) for each violation. Such civil charges shall be paid into the treasury of Isle of Wight County for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas in the county except that where the violator is the county or its agent, the civil charges shall be paid into the state treasury. The civil charges shall be in lieu of any appropriate civil penalty imposed under subdivision (1) of this subsection. Civil charges may be in addition to the cost of any restoration required or ordered by the Board of Supervisors or Zoning Administrator.